

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

PAUL L. MURPHY,
Plaintiff

v.

**CORRECTIONAL MEDICAL
SERVICES, CATHY BEAN,
NURSE JIM, DR. KOZUB,
DR. KUTLER, NURSE LENA,
NURSE PATTY, NURSE MANAGER
SHARON, DR. BIRGE,
Defendants**

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File No. 1:04-CV-71

ORDER

The Magistrate Judge's Report and Recommendation was filed July 21, 2005 (Doc. 96). In addition to the reasons set forth in the Report and Recommendation, plaintiff's pro se complaint, viewed liberally, may encompass medical needs allegedly occurring after the prior actions and, therefore, would not be subject to dismissal on res judicata grounds. See Stephen v. Prunty, 46 F.3d 1145 (9th Cir. 1995)(table). After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

The defendants' motion for summary judgment (Doc. 80) is DENIED. Although the document entitled "Plaintiffs Motion for Summary Judgment" (Doc. 84) is a response to the defendants' motion, to the extent the filing is a motion and requires a ruling, the motion is DENIED.

This matter is hereby returned to the Magistrate Judge for further proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 10th day of August, 2005.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge